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**5 November 2018**

**To: President Cyril Ramaphosa**

**Copied To:**

Personal Assistant to the President

Ms. Malebo Sibiyi

PER EMAIL: [malebo@presidency.gov.za](mailto:malebo@presidency.gov.za)

**Copy to: Minister of Basic Education Angie Motshekga**

**Copied to:**

Personal Assistant to the Minister of Basic Education

Mr. Steve Mabua

PER EMAIL: [mabua.s@dbe.gov.za](mailto:mabua.s@dbe.gov.za)

Dear President Cyril Ramaphosa

**The Constitutional Court has Stopped the Appeal - Now is the time to urgently fix dangerous and inadequate schools**

We write to you today with a deep sense of frustration and dismay at the approach that you and your executive have taken toward the issue of school infrastructure in poor communities. As you know, thousands of South African learners attend schools with dangerous conditions, and many more are without adequate teaching and learning spaces and resources. As a movement, we have been disappointed with the lack of urgent and coherent planning to address these systemic issues.

Thankfully, this country's courts continue to provide us with hope. They properly construe the Constitution so as to ensure that the executive remains accountable for the safety, dignity and equality of South African children and learners. But our judiciary should not, and cannot, be the sole custodian of this approach.

**The Fix the Norms Case - It should not have been left to the Constitutional Court to #StopTheAppeal**

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✉ **Postal:** PO Box 40114, Elonwabeni, 7791 🏢 **Office:** 2<sup>nd</sup> Floor Isivivana Centre, 8 Mzala Street, Khayelitsha

✉ **E-mail:** [info@equaleducation.org.za](mailto:info@equaleducation.org.za) ~ 🌐 **Website:** [www.equaleducation.org.za](http://www.equaleducation.org.za) ~ 📞 **Telephone:** 021 361 0127

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We wrote to you on 31 July this year in the hope that you would welcome the important judgment of the Bhisho High Court, which declared certain provisions of the school infrastructure law unconstitutional.

We expressed to you, in our letter, that the litigation had been unnecessary. We explained that we had attempted, without success, to engage Minister Motshekga on the need to amend the regulations so as to meaningfully protect the right of learners to attend safe and adequately built schools. We highlighted the tragedy of Lumka Mkethwa's death in a pit latrine, which occurred during the hearing of the case to fix the infrastructure law. This was an unconscionable loss that came four years after 5-year old Michael Komape died in the same manner.

As we said in our previous letter, the Bhisho High Court's declaration that the right to basic education is immediately realisable was an affirmation of the law we have long known. We expressed to you that we did not want to go to court to fix the Norms and Standards in the first place, and we did not want to have to go back.

We wrote that "the years of spending time and money on litigating should be past", and that "South Africa's children can no longer afford it".

We were disappointed and saddened by your lack of response to our letter. Even more so, we were dismayed by the decision of the Department of Basic Education to launch an application for leave to appeal the judgment.

We tried our best to avoid litigating to begin with, and we pleaded with you and the Department to respect the Bhisho High Court's well reasoned decision. We asked you to engage us on the ruling that the obligations to fix schools falls on the state as a whole and must be subject to specific timeframes. We called publicly on you, Minister Motshekga and all the provincial education ministers to #StopTheAppeal. We were again ignored.

Instead, government's time and public money was spent on fighting an important legal precedent on nonsensical grounds which we knew could never succeed. Learners, teachers, parents and activists, as well as good civil servants, have now had to wait an additional three and a half months, without a strong set of school infrastructure regulations, while the leave to appeal pended.

On 2 November the Constitutional Court gave an order refusing to hear the appeal. The Court agreed with us and our lawyers, saying your appeal had "no prospects of success". There is no longer any debate: All organs of state have to work together with urgency to meet the deadlines for fixing school infrastructure, one of which has already been missed.

We had to rely on the Court to "Stop the Appeal", because you did not. We are concerned that you missed an opportunity to show the type of leadership, political will, and dedication to Constitutionalism that we have hoped from you.



## **The Limpopo school sanitation “plan” is an affront to the children who have died because of poor infrastructure**

We must also record our shock at the inadequate and unconstitutional ‘plan’ which the national and Limpopo education departments provided to the Polokwane High Court. The Court ordered the departments to fix inadequate and unsafe sanitation after hearing the case of the Komape family. We are an *amicus curiae* – friend of the court – in that case.

The plan that your national education department filed jointly with the Limpopo department shows none of the urgency that you indicated in your requests to Minister Motshekga following Lumka Mkethwa’s death in March this year, nor in the rhetoric we heard at the launch of the SAFE initiative.

Are you aware that in their report to the High Court, Minister Motshekga and Limpopo Education MEC, Ishmael Kgetjepe, have baldly indicated that it is only possible to *begin* to address sanitation infrastructure at Limpopo schools in 2026? That is a decade after the first deadline of the Norms and Standards requirements is meant to be have been *fulfilled*.

It is unfathomable that a plan arising from a case of a child’s death in an unsafe pit latrine provides a wholly inadequate assessment of the *status quo* of dangerous latrines and other toilet structures at schools. From a small sample of schools we have engaged with, it is clear that there are many schools with dangerous and unusable toilets that the departments have not planned for. The departments’ plan makes no attempt to create interim measures, such as safely cordoning off dangerous spaces and providing portaloos, in order to ensure that children are protected and able to access sanitation.

With this apparent lack of empathy, care and urgency, we are left to ask, how many more children must die?

We have filed an affidavit at the Polokwane High Court in which our attorney, Precillar Moyo of Equal Education Law Centre, sets out the drastic deficiencies in this “plan”, and calls upon the court to ensure that an adequate plan is devised as a matter of urgency. The affidavit is attached to this letter.

As you know, the Norms and Standards regulations say that plain pit latrines are not allowed at schools. They also say that every school must have access to an acceptable form of sanitation by the end of November 2016, and must have adequate toilets for girls and boys by the end of November 2020. We went to the Bhisho High Court to review those regulations so that we could delete the loopholes that rendered these dates merely loose targets and not binding deadlines to which the state, as a whole, would be bound.

There is perhaps no better example of the dangers of these now invalid loopholes than the claim, in the departments’ Limpopo plan, that they will delay school sanitation projects for another eight years, without any acceptable plan to address urgent situations in the interim.

We are disheartened to see that while the appeal pended, learners and teachers have continued to suffer the indignity of unsafe and undignified sanitation. Groundup recently reported on learners in



Cofimvaba, Eastern Cape, relieving themselves in the open because of the failure of the Eastern Cape Education Department to assist the school. Tragically, this situation is not an outlier. Our children deserve better.

We hope that you will see fit to take up some of these concerns with your executive and to respond to this and our previous letter.

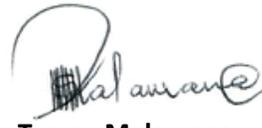
Mr President, it pains us to receive substantive responses from the executive only in the form of court papers. As we said in our previous letter, we would welcome an opportunity to engage with you and the Minister further, and in person, on these critical issues.

Yours sincerely,



**Noncedo Madubedube**

**General Secretary**



**Tracey Malawana**

**Deputy General Secretary**

